IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7831 OF 2004

M/s Valuepay Com. (India) Pvt. Ltd. .. Petitioners

V/s

Rajkumari Renuka Devi & Anr. .. Respondents

Mr.Puneet Anand for the petitioners.

Mr.K.S. Gala for the respondents.

CORAM : R.M.S. KHANDEPARKAR, J.

DATE : 18TH OCTOBER 2004

P.C. :

1. Heard the learned advocates for the parties. Perused the records.

2. The petitioners challenge the order dated 3rd July 2004 passed by the Revisional Authority of the Small Causes Court at Mumbai. By the impugned order, the application for stay of the order passed by the Trial Court in exercise of powers under Order XV-A of Civil Procedure Code has been rejected during the pendency and final disposal of the Revision Application filed by the petitioners against the said order of the Trial Court.

3. At the outset, it is to be noted that the

impugned order is an interlocutory order and that itself is sufficient to reject the petition in limini.

4. Even on merits, there is no substance in the challenge to the impugned order, nor there is case for interference. in the matter at this stage in writ jurisdiction.

5. It is the case of the petitioners that there is serious dispute sought to be raised by the petitioners as regards the petitioners' liability to pay the amount claimed by the respondents as licensees inasmuch as that though the part of the amount claimed is undisputedly the license fee, the balance thereof forms the compensation towards the amenities and facilities alleged to have been provided by the respondents to the petitioners in relation to the suit premises which are admittedly occupied by the petitioners on license from the respondents.

6. According to the learned advocate for the petitioners, since the Revisional Court has admitted the revision application, stay of the order of the Trial Court ought to have been followed as a natural consequence thereof. Merely because the revision application is admitted for final hearing, that does not

mean that the petitioners in such revision application is entitled for stay of the order of the Trial Court as a matter of course. The question of grant of stay of the order passed by the Trial Court in revision application arises only when a prima facie case for that purpose is made out by the party and the Revisional Court is satisfied of such prima facie case. Such an order is an interlocutory order and obviously passed in the exercise of discretion of the revisional authority. Being so, once the Revisional Court exercises its discretion against the petitioners, unless it is shown that the discretionary order has been passed arbitrarily or in contravention of any statutory provision or is patently illegal, there cannot be any justification for interference with such an order in writ jurisdiction. On this count also, the petition is liable to be rejected.

7. The impugned order is also challenged on the ground that the Trial Court had no jurisdiction to direct the petitioners to deposit the amount which is claimed by the respondents towards the alleged amenities and facilities stated to have been provided by the respondents to the petitioners in relation to the suit premises as such amount of compensation does not form part of the license fee within the meaning of the said

expression under Rule 1 of Order XV-A of C.P.C. As regards the said contention, the same being the main contention which is required to be dealt with by the Revisional Court, it would be too premature for this Court to pronounce judgment on the said point sought to be canvassed by the learned advocate for the petitioners. Nevertheless, it is necessary to deal with that aspect of the matter only for the purpose of deciding the matter in relation to the issue pertaining to the admission or rejection of the petition before this Court.

8. Undisputedly, the agreements, which have been entered into between the parties, apparently disclose a liability on the part of the petitioners in relation to the occupation of the suit premises in the form of license fee as well as compensation towards amenities and facilities provided to the petitioners in relation to the suit premises. Undisputedly, the agreements have not been registered. The contentions of the petitioners about the terms and conditions, subject to which the premises were given on leave and license, would prevail unless otherwise proved. According to the learned advocate for the petitioners, the expression "proved" in sub-section 2 of section 55 of the Maharashtra Rent Control Act, 1999 ("the said Act" for short) would

disclose that it relates to the evidence to be led by the parties in the course of hearing of the main suit itself and at this stage there will be presumption in favour of the contention sought to be raised on behalf of the petitioners in relation to the terms and conditions of the agreement for leave and license. It is the contention of the petitioners that some of the facilities, which were agreed to be provided under the relevant agreement, were withdrawn and, therefore, there was no liability in that regard upon the petitioners and, therefore, the respondents are not justified in claiming the entire amount as compensation. Secondly, the compensation cannot form part of the license fee under Order XV-A of C.P.C.

9. As regards the expression "proved" in sub-section (2) of section 55 of the said Act, undoubtedly it would relate to the materials to be produced by the parties in support of their contention once the petitioners seek to dispute the terms and conditions of the leave and license agreement as alleged by the respondents. Nevertheless, it cannot be said that the said expression refers only to the recording of evidence in the suit itself. In miscellaneous proceeding during the pendency of the suit, certainly the said expression relate to any other material to be

produced by the parties to rebut the presumption which arises in favour of the contention raised on behalf of the licensee in view of the said provision comprised in sub-section (2) of section 55 of the said Act on account of failure on the part of the licensor to register the agreement. Once the material in that regard is produced by the licensor, it will be necessary for the court, even in the course of the miscellaneous proceedings, to ascertain whether the presumption stands rebutted or not. In the case in hand, undisputedly there are agreements on record under the signatures of the parties. Though the said agreements have not been registered, the factum of the execution of the agreements is not in dispute. Being so, the presumption for the purpose of disposal of miscellaneous proceeding stands rebutted on the basis of the said agreements at this stage.

10. As regards the powers of the court to direct the defendants to deposit the amount of arrears of rent and license fee, the provision in that regard comprised under Rule 1 of Order XV-A of C.P.C. The said provision refers to "rent, license fee claimed in the suit" and "as the court may direct". Besides, it also speaks of, apart from rent and license fee, the future mesne profits from the defendant and that would show that the

power given to the court is not restricted mainly to the license fee and/or the rent, but even the amount which may accrue in favour of the plaintiff being the liability of the defendant in relation to the suit premises arising during the pendency of the suit. No doubt, the quantum of mesne profits would normally depend upon the rent and license fee already agreed for the premises. But in a given case, it can also differ depending upon the material to be placed by the parties before the court. In any case, it cannot be said that the powers under Order XV-A of C.P.C. are restricted only to the amount specified as the rent or the license fee and it would exclude the compensation payable by the licensee in relation to the suit premises allowed to be occupied by him/her and the facilities or amenities provided by the licensor for the beneficial enjoyment of such premises allowed to be occupied by the licensee. Certainly once the party has agreed to occupy the premises, any demand of compensation which is termed as rent or license fee and in addition to pay fees for the enjoyment of further amenities and facilities provided for such premises, such fees in respect thereof would also form part of the license fee unless it is specifically agreed to the contrary.

11. It is also sought to be argued that considering

the definitions of the words "premises" and the "licensee" under section 7(9) and 7(5) respectively of the said Act, the premises which could be subject matter of license under the said Act would not include facilities other than those mentioned in section 7(9) and, therefore, the obligation of licensee in respect of those facilities cannot be construed as license fee within the meaning of the said expression and which can be ordered to be deposited by the court in exercise of powers under Order XV-A of C.P.C. The definition of the term "premises", which relates to the area and the facilities and benefits, does not disclose that it is confined only to the specified items under the said provision of law. Besides, while referring to those areas and additional facilities, the reference thereof is followed by the expression "including" which discloses that the provision is not exhaustive but the instances specified are some of the instances in relation to such areas and facilities which are to be considered as forming part of the premises under the license to the licensee in addition to the main premises. Being so, any compensation paid towards such additional area or facilities would certainly form part of the license fee unless there is specific agreement to the contrary between the parties.

12. It is also to be noted that the revisional court, while rejecting the application, has taken care to observe that the respondents shall not be entitled to withdraw the said amount to be deposited by the petitioners till the disposal of the revision application. Certainly the revisional court has, therefore, taken care to safeguard the rights of the petitioners in relation to the amount which is ordered to be deposited by the petitioners.

13. Before parting with the matter, it is necessary to record that all the observations made above are for the purpose of disposal of the present petition and the revisional authority shall not be influenced by the observations made in this order while disposing of the revision application on merits, as this Court has not expressed any opinion in that regard.

14. In the circumstances, there being no case made out for interference in the impugned order in writ jurisdiction and the impugned order does not disclose any illegality or any jurisdictional error as such nor any finding being contrary to the materials on record, the petition deserves to be rejected and is accordingly hereby rejected.

(R.M.S. KHANDEPARKAR, J.)